



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0595; FRL-9987-69-Region 1]

Air Plan Approval; New Hampshire; Transport Element for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision addresses the interstate transport requirements of the Clean Air Act (CAA), referred to as the good neighbor provision, with respect to the 2010 sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). This action approves New Hampshire's demonstration that the State is meeting its obligations regarding the transport of SO₂ emissions into other states.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0595. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit,

5 Post Office Square - Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Leiran Biton, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, tel. (617) 918-1267, email biton.leiran@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On September 27, 2018 (83 FR 48765), the EPA published a Notice of Proposed Rulemaking (NPRM) to approve the June 16, 2017 submittal from the State of New Hampshire as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO₂ NAAQS. An explanation of the CAA requirements, a detailed analysis of the State's submittal, and the EPA's rationale for approval of the submittal were provided in the NPRM, and will not be restated here. The public comment period for this proposed rulemaking ended on October 29, 2018. The EPA received one comment from an anonymous commenter. The anonymous comment lacked specificity to New Hampshire's SIP submittal and the interstate transport

requirements of CAA section 110(a)(2)(D)(i)(I) as they relate to the 2010 SO₂ NAAQS. A response to the anonymous comment is provided in the Response to Comments section.

II. Response to Comments

Comment: The commenter stated that emissions of SO₂ can undergo chemical reactions in the atmosphere to form fine particle matter, and that fine particulate matter can travel great distances affecting regional air quality and public health. The commenter stated that the transport of SO₂ and fine particulate matter across state borders, referred to as “interstate air pollution transport,” makes it difficult for downwind states to meet health-based air quality standards. The commenter stated the CAA’s “good neighbor” provision requires the EPA and states to address, through state implementation plans (SIPs), interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of a NAAQS in a downwind area in another state. The commenter asserted that New Hampshire must prove this SIP revision addresses and meets the obligations of the interstate transport requirements of the CAA respective to the 2010 SO₂ NAAQS. The commenter concluded, “To meet these obligations they must prove that the interstate transport requirements for all NAAQS pollutants prohibit any state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state.”

Response: The commenter did provide some general information about the formation of fine particulate matter from SO₂, but did not provide specific information to support not approving New Hampshire’s June 16, 2017 submittal. Fine particulate matter, generally referring to particulate matter (PM) with aerodynamic diameter less than or equal to 2.5 micrometers (PM_{2.5}), can travel great distances. PM_{2.5} can be emitted directly or formed secondarily through chemical transformation in the atmosphere involving a variety of precursor pollutants, including SO₂. The EPA has addressed interstate transport of PM_{2.5}, including secondarily-formed PM_{2.5},

through a separate action related to New Hampshire's SIP submittal for the 2012 PM_{2.5} infrastructure SIP. The EPA proposed to approve a revision to the New Hampshire SIP that included the provisions related to transport for the 2012 PM_{2.5} NAAQS on April 10, 2018 (83 FR 15343); EPA took action in a final rule to approve the New Hampshire SIP provisions related to interstate transport and other elements for the 2012 PM_{2.5} NAAQS on December 4, 2018 (83 FR 62464).

It is unclear what the commenter intended in the quoted final sentence of the comment. If the commenter meant to note that the CAA generally imposes an obligation that the state's interstate transport SIP for a new or revised NAAQS adequately meets the good neighbor provision for *that NAAQS*, we agree and believe that the New Hampshire SO₂ interstate transport SIP submittal meets these CAA obligations, as stated in our NPRM. Alternatively, if the commenter meant that this SO₂ interstate transport SIP must address transport for *all NAAQS*, we disagree.

The EPA interprets the CAA to require each state to demonstrate that it meets the "good neighbor" provisions of the CAA for a new or revised NAAQS for any of the six criteria air pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution, and sulfur dioxide). Particularly, CAA section 110(a)(1) requires states, three years after the promulgation of a NAAQS, to submit a plan that meets the requirements of 110(a)(2), which includes the interstate transport requirements of 110(a)(2)(D)(i)(I), for "such" NAAQS. The EPA believes the specification of "such" in relation to a particular NAAQS under 110(a)(1) narrows the state's obligation to submit an interstate transport SIP for that specific NAAQS, rather than requiring the state to demonstrate that its transport SIP is intended to address a particular NAAQS also meets the interstate transport requirements for all NAAQS. The EPA assesses each state's interstate transport SIP demonstration on a pollutant by pollutant basis, and for pollutants that result from both primary emissions and secondary (i.e., chemical) formation, the EPA does

assess both primary and secondary impacts. Because SO₂ does not form secondarily in the atmosphere, only an analysis of primary emissions is necessary. The EPA's NPRM to approve New Hampshire's June 16, 2017 submittal provided a weight-of-evidence analysis that addressed the "good neighbor" provision of the CAA. The EPA's assessment of New Hampshire's analysis presented in the NPRM proposed to find that the SIP revision sufficiently addresses that New Hampshire will not significantly contribute to nonattainment of the 1-hour SO₂ NAAQS or interfere maintenance of the SO₂ NAAQS in another state. The commenter does not point to any specific alleged flaw or gap in the EPA's assessment.

Therefore, the EPA is not making any changes to its proposed action based on the comments submitted by the commenter.

III. Final Action

The EPA is approving New Hampshire's June 16, 2017 transport SIP submission for the 2010 SO₂ NAAQS as a revision to the New Hampshire SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not

significant under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **Insert date 60 days after date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: December 10, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE—New Hampshire

2. Amend § 52.1520 in the table in paragraph (e) by adding an entry for “Amendment to New Hampshire 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I)” at the end of the table to read as follows:

§ 52.1520 Identification of plan.

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(e) * * *

NEW HAMPSHIRE NONREGULATORY

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approved date | Explanations |
|---|---|-------------------------------------|--|--------------|
| ** | * | * | * | ** |
| Amendment to New Hampshire 2010 Sulfur Dioxide NAAQS Infrastructure SIP to Address the Good Neighbor Requirements of Clean Air Act Section 110(a)(2)(D)(i)(I) | Statewide | 6/16/2017 | <u>[Insert date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u> | |

[FR Doc. 2018-27171 Filed: 12/14/2018 8:45 am; Publication Date: 12/17/2018]